Petition

81-1887

Supreme Court, U.S.
FILED
APR 10 1982
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

Term, 1982

No._____

Ex Parte CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC.,
Petitioner

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS AND PETITION FOR WRIT OF MANDAMUS

GEORGE JOHN KETO
ALVORD & ALVORD
Attorneys at Law
916 Sixteenth St., NW
Washington, D.C. 20006

Alpha Law Brief Co., Inc.—5606 Parkersburg—Houston, Texas 77036—223-3003

SUBJECT INDEX

	Page
MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS	1
PETITION FOR WRIT OF MANDAMUS	3
CERTIFICATE OF COUNSEL	7
CERTIFICATE OF SERVICE	8
REQUEST FOR LEAVE TO FILE APPLICATION FOR WRIT OF PROHIBITION	9
APPLICATION FOR WRIT OF PROHIBITION	11
ORDER	17

LIST OF AUTHORITIES

CASES	Page
Re Humes, 149 U.S. 192	5
Waldron v. Lee, 5 Pick. 323	5
UNITED STATES CONSTITUTION	
Fifth Article of Amendment	4
UNITED STATES STATUTES	
28 U.S.C. § 1651	4

IN THE

Supreme Court of the United States

Term, 1982

No._____

Ex Parte CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC.,

Petitioner

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

The petitioner in the above entitled matter respectfully asks the Court for leave to file the petition presented herewith, wherein it asks for a Writ of Mandamus directed to the Tenth Circuit Court of Appeals, directing said court to proceed in that certain Application for a Writ of Prohibition against United States Bankruptcy Judge Ralph Mabey from hearing matters involving Zions First National Bank of which his father is a Director, in which

case said Tenth Circuit Court of Appeals after receiving said matter has neglected to timely act.

Dated: March 31, 1982

CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC.,
Petitioner

By: _____

DR. WILLIAM R. PABST
President

GEORGE JOHN KETO
ALVORD & ALVORD
Attorneys at Law

IN THE

Supreme Court of the United States

Term, 1982

No._____

Ex Parte CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC.,
Petitioner

PETITION FOR WRIT OF MANDAMUS

GEORGE JOHN KETO
ALVORD & ALVORD
Attorneys at Law
916 Sixteenth St., NW
Washington, D.C. 20006

IN THE

Supreme Court of the United States

Term, 1982

No._____

Ex Parte CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC.,
Petitioner

PETITION FOR WRIT OF MANDAMUS

COMES NOW, The Centre for the Independence of Judges and Lawyers of the United States, Inc., hereinafter referred to as Petitioner who would show the Court as follows:

I.

Petitioner is a non-profit corporation incorporated in the District of Columbia with address of Suite 401, 918 Sixteenth St., NW, Washington, D.C. 20006.

II.

This petition is made pursuant to 28 U.S.C. 1651 as well as the Fifth Article of Amendment to the United States Constitution.

III.

On March 19, 1982, petitioner herein filed an Application for a Writ of Prohibition against United States Bankruptcy Judge Ralph Mabey in the Tenth Circuit Court of Appeals to prohibit Judge Mabey from hearing any cases involving Zions First National Bank of which his father is a Director.

IV.

The Tenth Circuit Court of Appeals after receiving said Application has neglected to timely proceed and act thereupon.

V.

The Writ of Mandamus superseded the writ of procedendo which was utilized for the purpose of quickening the action of inferior courts. Mandamus is now regarded as the proper, if not the only remedy, by which the sovereign power can compel the performance of official duty by inferior magistrates and officers of the law. *Waldron v. Lee,* 5 Pick. 323. The common law provides that it is the province of the court of kings bench to superintend all inferior tribunals, and to enforce the proper exercise of their powers, mandamus will lie from that court to the judges of any inferior court, commanding and requiring them to do justice according to the powers of their office, whenever they have delayed acting. 3 *B. Com.* 111.

VI.

Petitioner has a clear, legal right to the performance sought of the Tenth Circuit Court of Appeals, i.e. due process of law. *Re Humes,* 149 U.S. 192. Petitioner has

no other adequate remedy, since the writ only belongs to those who have legal rights to enforce, who find themselves without an appropriate legal remedy.

VII.

Attached hereto for all purposes is a copy of the above mentioned Application for Writ of Prohibition.

WHEREFORE, PREMISES CONSIDERED, Petitioner requests a Writ of Mandamus issue to the Tenth Circuit Court of Appeals that said Court proceed in and act upon said Application for a Writ of Prohibition since matters bringing into question, prima facie, the independence and integrity of the Judiciary of the United States shall be acted upon promptly, publicly and ethically.

Respectfully submitted,

CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC.,
Petitioner

By: _____
DR. WILLIAM R. PABST
President

GEORGE JOHN KETO
ALVORD & ALVORD
Attorneys at Law
916 Sixteenth St., NW
Washington, D.C. 20006

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public on this day personally appeared Dr. William R. Pabst, President of the Centre for the Independence of Judges and Lawyers of the United States, Inc., who being by me duly sworn, deposes and says that the foregoing is true and correct to the best of his knowledge, information and belief.

_____

Affiant

Subscribed and Sworn to before me the undersigned Notary Public on this the 31st day of March, AD, 1982.

_____

Notary Public in and for the
State of Texas

CERFICIATE OF SERVICE

I certify that a true and correct copy of the foregoing was this day placed in the U.S. Mail, First Class Postage Prepaid and addressed to (a) The Tenth Circuit Court of Appeals and (b) The Solicitor General of the United States. March 31, 1982.

Appendix

IN THE UNITED STATES COURT OF APPEALS FOR THE 10TH CIRCUIT

CIVIL ACTION NO. 82-1340

IN RE:
CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC., W. DALLIN GARDNER, AND LAMAR DEWSNUP,
Applicants

vs.

RALPH R. MABEY, JUDGE
UNITED STATES BANKRUPTCY COURT,
Respondent

REQUEST FOR LEAVE TO FILE APPLICATION FOR WRIT OF PROHIBITION

TO SAID HONORABLE COURT:

Comes now the above Applicants who respectfully request leave of this Court to file their Application for a Writ of Prohibition against the Honorable Ralph Mabey, Judge of the United States Bankruptcy Court for the District of Utah. A copy of the proposed application is attached hereto.

This request is made pursuant to 28 U.S.C. § 1651 and for good cause of why the same should be granted, the

undersigned refers to the proposed application attached hereto.

_____

Leonard Thomas Bradt

DATED this _____ day of _____, 1982.

IN THE UNITED STATES COURT OF
APPEALS FOR THE 10TH CIRCUIT

CIVIL ACTION NO. 82-1340

CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC., W. DALLIN GARDNER, AND LAMAR DEWSNUP,
Applicants

vs.

RALPH R. MABEY, JUDGE
UNITED STATES BANKRUPTCY COURT,
Respondent

APPLICATION FOR WRIT OF PROHIBITION

TO SAID HONORABLE COURT:

Applicant, Centre for the Independence of Judges and Lawyers of the United States, Inc., a non-profit corporation authorized to do business in the State of Colorado, with address at 1434 West Alabama Street, Houston, Texas 77006. Applicant, W. Dallin Gardner, resides at 718 South Main, Cedar City, Utah. Applicant, Lamar Dewsnup, resides at Box 42 Deseret Route, Delta, Utah. Respondent is the United States Bankruptcy Judge for the District of Utah, with offices in Salt Lake City, Utah and may be served at the Bankruptcy Court. Applicant,

Centre for the Independence of Judges and Lawyers of the United States, Inc. is a non-profit corporation that acts in the defense of human and civil rights in the United States. Applicant, W. Dallin Gardner, is a party in interest in the United States Bankruptcy Court in and for the District of Utah, Central Division, in the matter styled in re L. W. Gardner Company, Bankruptcy No. 80-02316. Applicant, Lamar Dewsnup, is a party in interest in the United States Bankruptcy Court in and for the District of Utah, Central Division, in the matter styled in re Lamar Dewsnup, et al, Bankruptcy No. B81-01367. Both of said cases being Chapter 11 matters.

On or about March 3, 1982 both parties in the Bankruptcy Court mentioned above were informed by Centre for the Independence of Judges and Lawyers of the United States, Inc., hereinafter referred to as Centre, about a conflict of interest involving Judge Mabey and Zions First National Bank of Salt Lake City who is also a party in the mentioned cases. The director of Zions First National Bank is Randall Mabey, who is the father of Ralph Mabey, the Judge. Judge Mabey of the United States Bankruptcy Court, Respondent herein, has lost all jurisdiction to continue with the above mentioned actions pending before him by reason of his personal bias and prejudice as established by the affidavit attached to all allegations of this application. And further in the matter of Applicant, Dewsnup, mentioned above, the Judge has refused to permit Applicant Dewsnup or any of his attorneys to insist that the Judge disqualify himself from the matter although the Judge is required so to do and had notice of the requirement as of March 3, 1982. The personal bias and prejudice which precludes the Judge from impartially exercising his judicial duties in this mat-

ter, to wit refusing to recuse himself because of the fact that he is protecting his father's financial interest in the Zions Bank in each of these cases. It is a denial of due process for all the parties. By his refusal to permit Applicant Dewsnup to obtain competent counsel to represent him, Respondent has displayed in this fashion his marked prejudice against Applicant Dewsnup. The proper administration of justice requires of a judge not only actual impartiality but also the appearance of a detached impartiality. The relationship of the judge and the judge's father in these matters in which the judge's father is a party in interest demonstrates a bent of mind that prevents and impedes impartiality in this matter. The judge refuses to disqualify himself although required to do so and has persisted and will continue to persist unless prohibited and restrained by this Court in presiding over the action in which Applicant Gardner and Applicant Dewsnup are parties therein. In continuing, said judge will proceed to rule in the matters now pending before him as mentioned above and render judgments therein unless prohibited and restrained by writ of prohibition issued by this Court. Applicants have no plain, speedy or adequate remedy by appeal or otherwise for the reason that the appeals that would be made are interlocutory in nature.

The relief sought by this petition is that the Respondent be Prohibited from taking any further action, in his capacity as judge, in the above-referenced cases or in any other cases pending before him in which Zions First National Bank of Utah is in any way interested, as a party creditor, or otherwise.

WHEREFORE, Applicants pray for the issuance of a Writ of Prohibition by this Court directed to Respondent Judge in the United States Bankruptcy Court, Salt Lake City, Utah, directing the Respondent, Ralph R. Mabey, United States Bankruptcy Judge, to refrain and desist from any further proceedings in the cases mentioned above and any other cases in which Zions First National Bank is in any way interested, either as a party creditor or otherwise, and requiring that said prohibition be made permanent. Applicants pray for general relief.

DATED this _____ day of March, 1982.

Leonard Thomas Bradt
5001 Treschwig
Spring, Texas 77373
(713) 821-8819

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that on this the 18th day of March, a true and correct copy of the foregoing was mailed, certified mail, return receipt requested, to Ralph Mabey, United States Bankruptcy Judge, United States Courthouse, Salt Lake City, Utah.

Leonard Thomas Bradt

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared LAMAR DEWSNUP to me well known to be a credible person of lawful age and qualified in all respects to make this affidavit, who being first duly sworn on oath says that he has read the foregoing and that same is true and correct.

/s/ LAMAR DEWSNUP
Lamar Dewsnup

SUBSCRIBED AND SWORN to before me by the said LAMAR DEWSNUP on this the 18th day of March, 1982, to certify which witness my hand and seal of office.

/s/ WILLIAM R. PABST
Notary Public, State of Texas

My Commission Expires
March 23, 1985.

STATE OF NEVADA §

COUNTY OF CLARK §

Before me, the undersigned Notary Public, on this day personally appeared Mr. W. Dallin Gardner to me well known to be a credible person of lawful age and qualified in all respects to make this affidavit, who being first duly sworn to oath says that he has read the foregoing and that same is true and correct.

/s/ W. DALLIN GARDNER
W. Dallin Gardner

Subscribed and sworn to before me by the said W. Dallin Gardner on this the 17th day of March, 1982 to certify to which witness my hand and seal of office.

/s/ SARAH LAMBERT
Sarah Lambert
Notary Public, State of Nevada,
Clark County.

My Commission expires
August 3, 1985.

IN THE UNITED STATES COURT
OF APPEALS FOR THE 10TH CIRCUIT

CIVIL ACTION NO. 82-1340

CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC., W. DALLIN GARDNER, AND LAMAR DEWSNUP,
Applicants

v.

RALPH R. MABEY, JUDGE
UNITED STATES BANKRUPTCY COURT,
Respondent

ORDER

Reading the requests of Applicants, CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC., W. DALLIN GARDNER, AND LAMAR DEWSNUP, for leave to file their Application of Writ of Prohibition and upon reading and considering the annexed proposed application, and good cause appearing,

It is ORDERED that leave be, and hereby is GRANTED to said Applicants to file their proposed Application for Writ of Prohibition against the Honorable Ralph R.

Mabey, Judge of the United States Bankruptcy Court, District of Utah, and to serve the same on the Respondent Judge and Court therein named.

DATED _____, 1982.

_____
JUDGE PRESIDING

Office - Supreme Court, U.S.
FILED
MAY 10 1982
ALEXANDER

No. 81-1887

In the Supreme Court of the United States

OCTOBER TERM, 1981

IN RE CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC., PETITIONER

ON MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF MANDAMUS AND PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1887

IN RE CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC., PETITIONER

ON MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF MANDAMUS AND PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner seeks leave to file a petition for a writ of mandamus requiring the United States Court of Appeals for the Tenth Circuit to rule on a petition for a writ of prohibition filed by petitioner in the court of appeals on March 19, 1982.

1. Petitioner filed a petition for a writ of prohibition in the court of appeals on March 19, 1982, in an attempt to prevent "Bankruptcy Judge Ralph Mabey * * * from hearing any cases involving Zions First National Bank of which his father is a Director" (Pet. 5). On March 25, 1982, the court of appeals ordered Judge Mabey to file a response to the petition on or before April 5. Following receipt of Judge Mabey's response, the court ordered petitioner to file a reply by April 22.

On April 10, 1982, in the midst of this expedited briefing schedule, petitioner sought leave to file a petition for a writ of mandamus in this Court. Petitioner alleged that "[t]he

Tenth Circuit Court of Appeals after receiving said Application [for a writ of prohibition] has neglected to timely proceed and act thereupon" (Pet. 5), and it requested this Court to order the court of appeals to act on the pending application.

2. On April 30, 1982, the court of appeals denied petitioner's petition for a writ of prohibition. A copy of the court's order is attached hereto. Accordingly, petitioner already has received the relief requested in this Court.

It is therefore respectfully submitted that the petition for a writ of mandamus should be denied.

REX E. LEE
Solicitor General

MAY 1982

DOJ-1982-05

Appendix

APPENDIX

MARCH TERM - APRIL 30, 1982

Before Honorable Robert H. McWilliams, Honorable Jean S. Breitenstein, and Honorable William E. Doyle, Circuit Judges.

IN RE:	)	
	)	
CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS OF THE UNITED STATES, INC., AND LAMAR DEWSNUP,	)	
	)	
PETITIONERS,	)	No. 82-1340
	)	
VS.	)	
	)	
RALPH R. MABEY, JUDGE, UNITED STATES BANKRUPTCY COURT,	)	
	)	
RESPONDENT.	)	
	)	

This matter comes on for consideration of:

A. The application of Centre for the Independence of Judges and Lawyers of the United States, Inc., et al. for a writ of prohibition directed to Honorable Ralph R. Mabey, United States Bankruptcy Judge for the District of Utah, prohibiting him from conducting further proceedings in two cases: In re L. W. Gardner Company, Bankruptcy No. 80-02316, and In re Lamar Dewsnup, et al., Bankruptcy No. B81-01367, both in the District of Utah, Central Division. The court ordered a response to the petition and a reply to the response, both of which were filed and considered.

B. The letter motion of W. Dallin Gardner asking that his name be stricken from any and all papers pertaining to the captioned cause.

Upon consideration whereof, it is the order of the Court as follows:

1. The application for a writ of prohibition by the petitioners, Centre for Independence of Judges and Lawyers of the United States, Inc., et al., is denied.

It appears that the Centre for Independence of Judges and Lawyers of the United States, Inc. has doubtful standing to bring this proceeding; that petitioners are attempting to use Rule 21, Federal Rules of Appellate Procedure, instead of an appeal to resolve the issues; and that, according to the response, the matters sought to be raised are now moot.

2. The motion of W. Dallin Gardner to have his name stricken from the caption of this proceeding is granted and his name has been stricken from the caption.

/s/ Howard K. Phillips

HOWARD K. PHILLIPS
Clerk